IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 23514 of 2006(Y)

OS.1019/2001 of II ADDL.M.C.,TRIVANDRUM
.....

PETITIONERS:
---

1. SREEJA, D/O.RAJAMMA, AGED 37 YEARS,
'SREE VARDHAN', KACHANI P.O., NETTAYAM,
THIRUVANANTHAPURAM, NOW RESIDING AT SAROVARAM,
SREENIVASAPURAM P.O., VARKALA.

2. SAJEESH SREDHAR C, S/O.SREEDHARAN,
AGED 38 YEARS, RESIDING AT SREE VARDHAN,
KACHANI P.O., NETTAYAM, THIRUVANANTHAPURAM.

3. SHOJEE SREEDHAR, S/O.SREEDHARAN,
RESIDING AT SREE VARDHAN, KACHANI P.O.,
NETTAYAM, THIRUVANANTHAPURAM.

4. SOJA SREEDHARAN RESIDING AT
SREE VARDHAN, KACHANI P.O.,
NETTAYAM, THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE

RESPONDENTS:

LAKSHMI NALINI, D/O.LAKSHMI,
AGED ABOUT 50 YEARS, THUNDUVILAKATHU PUTHEN VEEDU
PONGUMOODU, THIRUVANANTHAOURAM, NOW RESIDING AT
KADAYAR VEEDU, KACHANI P.O., NETTAYAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.KESAVAN NAIR
SRI.K.G.CLEETUS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE JUDGMENT DT. 15.2.2003 IN O.S.1019/01 OF II ADDL.MUNSIFF COURT, THIRUVANANTHAURAM

EXT.P2: -DO- OF THE AFFIDAVIT AND PETITION IN I.A. 2861/03 OF II ADDL. MUNSIFF COURT, THIRUVANANTHAOURAM

EXT.P3: -DO- OF THE AFFIDAVIT AND PETITION IN I.A. 6104/05 IN O.S. 1019/01 OF II ADDL. MUNSIFF COURT, THIRUVANANTHAURAM

EXT.P4: -DO- OF THE AFFIDAVIT AND PETITION IN I.A. 6105/05 IN O.S.1019/01 OF II ADDL. MUNSIFF COURT, THIRUVANANTHAPURAM

EXT.P5: -DO- OF THE COUNTER AFFIDAVIT FILED BY RESPONDENT TO EXT.P4

EXT.P6: -DO- OF THE COMMON ORDER IN I.A.6104/05 AND I.A. 6105/05 IN O.S.1019/01 OF II ADDL. MUNSIFF COURT, THIRUVANANTHAPURAM

jj /TRUE COPY/

P.A. TO JUDGE

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 23514 OF 2006

= = = = = = = = = = = = = = =

Dated this the 17th day of October, 2007.

J U D G M E N T

This writ petition is filed against the order of the Addl. Munsiff, Thiruvananthapuram whereby he dismissed two applications which was filed for restoration. Those applications are to restore the restoration application after condoning the delay. A petition was filed stating that there is a delay of 750 days and the reason attributed is that the counsel did not inform about the posting of the I.A. nor its disposal and therefore the claimant was not in a position to contact the lawyer and do the needful. The learned counsel for the writ petitioner would submit that being an application under Section 151 CPC it is the residuary article of the Limitation Act that may apply. I am not going into the merits or demerits of those contentions. The suit is one for fixation of boundary and it will affect the right of the party. He had moved an application for restoration which has been

dismissed. If there are sufficient grounds for restoration it is a matter that has to be considered by the Court. I feel, in the fitness of things, it is better to restore the restoration application after condoning the delay so as to give the party an opportunity to prosecute that restoration application by adducing satisfactory evidence. Therefore, orders under challenge are set aside and the Court below is directed to restore I.A.2861/03 and dispose it of in accordance with law after affording sufficient opportunities to both sides to adduce evidence.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-